IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 26 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAVNIT VASANTBHAI RATHOD

Versus

VASANTBHAI CHHAGANBHAI RATHOD

Appearance:

1. Criminal Revision Application No. 26 of 1997

MR KR DESAI for Petitioner No. 1-2

RULE SERVED for Respondent No. 1

MR ND GOHIL, APP for Respondent No. 2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 20/12/2002

ORAL JUDGEMENT

1. The original petitioner of Criminal Revision Application No. 68 of 1995, which came to be heard, decided and disposed of by the learned Metropolitan Magistrate, Court No. 17, Ahmedabad (who will be hereinafter referred to as the learned Magistrate) has preferred this Criminal Revision Application u/s 397 read with Section No.401 of the Criminal Procedure Code, 1973 (For short "Cr. P.C.") challenging the correctness, legality and propriety of the judgment exh. 6 dated 25-9-1996 rendered by the Additional Sessions Judge, City Sessions Court, Ahmedabad (who will be hereinafter referred to as the First Revisional Court) rendered in Criminal Revision Application No. 156 of 1996, by which the order dated 10-6-1996 of the learned Magistrate passed in Cri. Misc. Application No. 68 of 1995 was modified and the sentence undergone by the revision opponent no. 1 husband was considered to be just and proper sentence and he was ordered to be released on 30-9-1996.

2. The facts leading to this Criminal Revision Application, in a nutshell, are as follows :

Revision petitioners no. 1 and 2 who are the minor children of the revision opponent no. 1, have presented this present Criminal Revision Application through their guardian and mother - Umaben Vasantbhai Rathod. She is the wife of the revision opponent no. 1.

On 18-6-1992 the present revision petitioners and their mother had filed one Misc. Criminal Application No. 96 of 1992 u/s 125 of the Cri. P. C. for maintenance, against the revision opponent no. 1 husband in the Court of the learned Magistrate. The learned Magistrate allowed that maintenance application and granted maintenance in favour of the present revision petitioners by her judgment dated 24-4-1995. By that judgment each minor was granted maintenance @ Rs.200/p.m. from the date of the application. Thereafter, the revision opponent no. 1 - husband did not comply with that order of maintenance and therefore both the minor children through their mother filed Misc. Criminal Application No. 68 of 1995 for recovery of the arrears of amount of maintenance of Rs. 14,800/- being amount of maintenance for the period from 18-6-1992 to 18-7-1995 i.e. for 37 months. In that Misc. Criminal Application No. 68 of 1995, the learned Magistrate passed the order dated 10-6-1996 by which the opponent no. 1 husband was sentenced to undergo simple imprisonment for a term of 9 months and 7 days as the revision opponent no. 1 had failed to make payment of maintenance of 37 months.

3. Being aggrieved against and dissatisfied with the order of sentence, sending him to jail the revision opponent no.1 husband preferred Cri. Revision Application No. 156 of 1996 in the First Revisional Court. The learned Additional Sessions Judge, City Sessions Court, Ahmedabad after going through the record of the case and after hearing the present revision opponent no. 1 in person and the learned advocate for the present revision petitioners, allowed that Criminal Revision Application No. 156 of 1996 partly by modifying the order dated 10-6-1996 of the learned Magistrate. He modified that order by reducing the sentence to sentence already unergone. He also directed the jail authority to release the revision opponent no. 1 on 30-9-1996.

4. Being aggrieved against and dissatisfied with the judgment exh. 6 dated 25-9-1996 rendered by the learned Additional Sessions Judge, City Sessions Court, Ahmedabad in Criminal Revision Application No. 156 of 1996, the original applicants No. 2 and 3 have preferred this present Criminal Revision Application and challenged the correctness, legality and propriety of the order of the learned Additional Sessions Judge, City Sessions Court, Ahmedabad.

5. I have heard Mr. K.R. Desai, learned advocate for the revision petitioners and Mr. N.D. Gohil, learned A.P.P. for the revision opponent no. 2 - State of Gujarat. The revision opponent no. 1 though served with the notice of Rule has remained absent.

6. Mr. K.R. Desai, learned advocate for the revision petitioners argued that the learned Additional Sessions Judge, City Sessions Court, Ahmedabad has no power to reduce the sentence in the Criminal Revision Application. In support of his submission, he has relied on the decision of Chandrikaben Navinbhai Dave Vs. State of Gujarat and Another, reported in 1998 (1) - 29 (1) G.L.R. 117, wherein it has been held that the Sessions Judge cannot in absence of proper reasons and without recording his reasons, reduce such sentence in revision. In view of this, he submitted that this Criminal Revision Application be allowed and the impugned order of the learned Additional Sessions Judge, be quashed and set aside.

7. Mr. N.D. Gohil, learned A.P.P. for the revision opponent no. 2 State of Gujarat has submitted that the learned Addl. Sessions Judge, has by relying upon the authority cited by Mr. K.R. Desai, learned

advocate for the revision petitioners, exercised the powers to reduce the sentence. As per the decision cited by Shri Desai, while reducing the sentence, the learned Additional Sessions Judge was required to assign proper reasons and that reasons should be recorded in the in the judgment. He has further submitted that in this case the learned Additional Sessions Judge has assigned the reasons in para 5 of his judgment. He has submitted that in view of this this Criminal Revision Application be dismissed.

8. I have perused the impugned judgment. The learned Additional Sessions Judge in para 5 of his judgment observed to the effect that "it appeared to him that the the petitioner before him was suffering from illness of Tuberculosis (TB) for which certain documents were produced by him in the trial Court. The learned Addl. Sessions Judge has referred to those documents produced in the case showing that the petitioner before him had taken medical treatment in the T.B. Hospital at Amargadh (Saurashtra) on 17-9-1993, 23-9-1995, 17-12-1994 and 12-9-1995. The learned Additional Sessions Judge has also referred to the zerox copy of the document executed by the leading members of the caste - panch of the parties. In this writing it has been stated that the wife had given threats that if no writing would be executed in her favour, she would commit suicide by setting her blaze and under such threats of that applicant wife, leading members of the caste - panch had executed that writing. The learned Addl. Sessions Judge has taken into consideration the submissions made by the husband coupled with the documents showing the illness of the husband and the fact that he was taking medical treatment in Amargadh T.B. Hospital. After considering all the said facts, he thought it fit to reduce the sentence awarded by the learned Magistrate. Looking to the impugned judgment, it cannot be said that the learned Addl. Sessions Judge has not assigned reasons much less proper reasons. Here in this case, he has assigned reasons which are quite plausible and possible. When the discretion has been given to the learned Addl. Sessions Judge, he has exercised that discretion judiciously by giving proper reasons and in view of this, this Court finds that there is no illegality in the impugned order or the order cannot be said to be incorrect or perverse.

9. From the record, it appears that the revision opponent no. 1 was taken into judicial custody on 10-6-1996 and by the impugned judgment rendered by the learned Addl. Sessions Judge, he was directed to be released from the jail on 30-9-1996. Thus, he has

remained in the jail for three months and twenty (20) days. Considering all these aspects, the learned Addl. Sessions Judge thought it fit to reduce the sentence and therefore the impugned order cannot be said to be incorrect, illegal or improper.

10. In view of discussion made hereinabove, this Criminal Revision Application deserves to be dismissed. Accordingly, this Criminal Revision Application is dismissed. The impugned judgment and order dated 25-9-1996 at exh. 6 rendered by the Addl. Sessions Judge, City Sessions Court, Ahmedabad in Criminal Revision Application No. 156 of 1996 is confirmed. Rule is discharged.

(H.H. Mehta, J.)

/JVSatwara/